

117930
DECISION



Welleand
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

21294

FILE: B-202807

DATE: March 25, 1982

MATTER OF: Doyle J. Delauder

- DIGEST:
1. An employee of the United States Forest Service has requested reconsideration of the settlement action by our Claims Group sustaining a determination by the agency that he is liable to the Government for \$250 for damages to a Government-leased truck caused by his negligence. The employee contended to our Claims Group that improper notice had been given as to the tendency of the truck in his care to jump from park into reverse. The record shows that a memorandum dated January 29, 1979, was circulated in the employee's district prior to the accident and it called attention to an earlier bulletin which described the actions to take to avoid accidental damage because of the gear slippage tendency of certain Ford vehicles, including the damaged truck. Thus, it was the employee's negligent failure to take the prescribed precautions in parking such a vehicle that constituted the proximate cause of the accident. In any case, we cannot agree that an ordinarily prudent person would leave a vehicle unattended with its motor running.
 2. An employee of the United States Forest Service has requested reconsideration of the settlement action by our Claims Group sustaining a determination by the agency that he is liable to the Government for \$250 for damages to a Government-leased truck caused by his negligence. The employee contended that the agency relied on irrelevant evidence of a prior accident which prejudiced its decision to hold him liable. Beyond the account of a telephone conversation between the employee's attorney and an agency official, no independent evidence has been offered that the employee's prior accident is the primary reason for the agency finding of liability. Regardless of the merits of considering any prior negligence on the employee's part, it is clear from the record that the major consideration in finding him financially responsible for the damage was the agency's finding of negligence.

This is in response to a request for reconsideration of settlement action by the Claims Group of the Accounting and Financial Management Division (AFMD) of this Office sustaining a determination

by the Forest Service that one of its employees, Mr. Doyle J. Delauder is liable to the Government for \$250 for damages to a Government vehicle caused by his negligence. For the reasons discussed below, we affirm the action of our Claims Group.

On August 16, 1979, a Ford pickup truck leased to the United States Forest Service was damaged while assigned to Mr. Delauder, an employee of that agency. At approximately 7:30 p.m., Mr. Delauder left the vehicle unattended near a service station with its motor running and its transmission in park. When he returned about 2 minutes later, Mr. Delauder observed the vehicle drift backwards approximately 50 feet and strike a metal pole. Once Mr. Delauder reached the vehicle, he noticed that the motor was still running and that its transmission was in reverse. Mr. Delauder also noticed that the vehicle's bumper and tailgate had been damaged by the collision.

Thereafter, the Forest Service Property Management Officer (PMO) reviewed the accident in accordance with procedures set forth in the Forest Service Manual (FSM). As a result of this review, the PMO decided to refer the matter to a Board of Survey for a decision on whether Mr. Delauder should be held financially liable for the damages to the vehicle.

The Board of Survey is authorized to impose financial liability on its employees for damage to Government-leased property where it finds that:

"* * * the (1) loss was caused by the employee's conduct and (2) employee had knowledge of the proper conduct and there were no mitigating circumstances that might justify granting the employee relief." 1/

The Board of Survey determined that Mr. Delauder:

"* * * acted in a negligent manner, causing said damage to rented vehicle. Based upon employee's negligent actions of leaving motor running and not setting parking brake, while leaving vehicle unattended, employee did act in a negligent manner and should be held financially liable for costs to repair said vehicle."

Thereafter, this determination was affirmed by the Forest Supervisor. Consequently, Mr. Delauder was billed for \$250, the amount of damage to the vehicle, by the Forest Service.

1/ FSM 6411.11 item 2.1 (August 1979, Amend. 51).

Mr. Delauder, through the National Association of Government Employees (NAGE) and its attorney sought review of the Forest Service's action by the Claims Group, AFMD of this Office, contending:

- That improper notice had been given as to the tendency of his vehicle to jump from park into reverse; and
- That a prior accident had been improperly and prejudicially considered by the Board of Survey in determining Mr. Delauder's liability.

The Claims Group sustained the Forest Service determination, stating that:

"Our own review of the case has found that your contention that no, or inadequate, notice was given to your client is not supported by the evidence. By memorandum dated January 29, 1979, * * * employees of the Ranger District were informed of the potential danger of certain Ford vehicles. 'Specifically, there is a tendency for these vehicles to jump from "park" into "reverse" gear.' This memorandum called attention to the GSA Bulletin, FPMR G-136, * * * which describes the vehicles with this problem, including the vehicle involved in this case, and also supplied proper remedies under 'Suggested Actions'. Operators of these vehicles were informed that they were to exercise these suggestions. Of these actions, your client ignored the last four of the five, * * * in that, 2) he did not turn the engine off, 3) he did not set the parking brake, 4) he used the park position as a substitute for setting the parking brake, and, 5) he left the vehicle unattended while the engine was running. Therefore, it is our view that he was on notice and was properly provided the necessary instructions. Consequently, it is our determination that he was negligent in the operation of the vehicle."

Nothing submitted on behalf of Mr. Delauder in the request for reconsideration warrants a finding that there was any error on the part of the Forest Service or of our Claims Group in determining that the damage to the vehicle resulted from Mr. Delauder's negligence.

We note that in Feeley v. United States, 220 F. Supp. 718 (E.D.Pa. 1963) judgment vacated on other grounds, 337 F.2d 924 (3d Cir. 1964), the District Court held that the action of a postal employee in leaving a post office truck unattended in the street with its motor running, with the result that the truck advanced uphill and struck a pedestrian, constituted both common law negligence and

negligence per se for violation of Pennsylvania's unattended motor vehicle statute 75 P.S. Pa. § 1022. 2/ Notwithstanding the fact that the employee also left the truck transmission in a forward gear, the court went on to say that "[i]f its emergency brake had been properly applied, it would have remained in place." Feeley, 220 F. Supp. at 719.

The accident here in question took place in West Virginia which has also enacted an unattended motor vehicle law similar to that considered in the Feeley decision. 3/ We note that in Worthington v. Belcher, 264 S.E.2d 148, 149 (S.C. 1980) it was held that placing the gear shift lever in "park" position did not comply with requirements of "effectively setting brake" within meaning of an identical provision in effect in South Carolina.

Even if it could be argued that the tendency of some Fords to jump into reverse from park constitutes the proximate cause of damage when accidents occur as a result of that tendency in other cases, the argument isn't supportable in this case. The January 29, 1979 memorandum, was issued to all employees of the Ranger District more than 6 months prior to Mr. Delauder's accident, and it called attention to an even earlier GSA Bulletin which described the actions to take to avoid accidental damage because of the gear slippage tendency of Mr. Delauder's type of vehicle. In our view, it was Mr. Delauder's negligent failure to take the prescribed precautions in parking such a vehicle that constitutes the proximate cause of the accident. See DeMaine v. Brillhart, 303 A.2d 506, 508 (Pa. Super. Ct. 1973). Had he followed the procedures set out in the GSA Bulletin FPMR G-136, he would have shut off the engine and set the parking brake when he left the vehicle unattended which would have made the accident unlikely.

Even assuming that Mr. Delauder had not received adequate notice of the problem with Ford transmissions, we cannot agree that an ordinarily prudent person would leave a vehicle unattended with its motor running. See Feeley, supra. 4/ Moreover, Mr. Delauder failed

2/ A similar, though not identical provision is now found in 75 Pa. C.S.A. § 3701.

3/ W.V.C.A. § 17c-14-1 provides that:

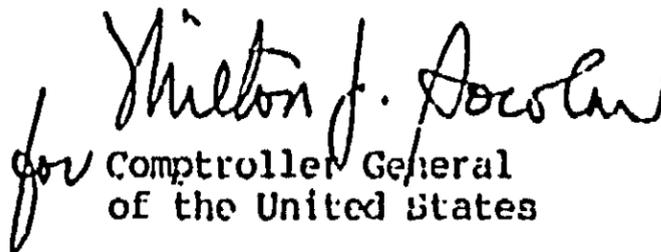
"No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key, and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway."

4/ See also cases collected at 16 A.L.R. 2d 1010-1013.

to apply the emergency brake as required in Forest Service Handbook 6709.11 (Health and Safety Code, June 1979), and W.V.C.A. § 17c-14-1. Thus, we conclude that Mr. Delauder's actions constituted negligence.

The second NAGE contention is that the Board of Survey relied on irrelevant evidence of a prior vehicle accident involving Mr. Delauder which prejudiced its decision to hold him liable. Beyond the account of a telephone conversation between the NAGE's attorney and a Forest Service official, no independent evidence has been offered that Mr. Delauder's prior accident was "the primary reason" for the Board of Survey's finding of liability. The only reference to the prior accident, mentioned briefly at the conclusion of an administrative report to the GAO by the Forest Service, is an acknowledgment that the Forest Supervisor knew that "the accident was in some respects a repeat of an earlier accident." Regardless of the merits of considering any prior negligence on Mr. Delauder's part, it is clear from the record that the major consideration in finding him financially responsible for this accident was the Board's finding of negligence.

We therefore concur with the action of our Claims Group in sustaining the Forest Service's determination of liability and urging prompt collection of \$250 from Mr. Delauder.

for 
Comptroller General
of the United States